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09/864,043	05/23/2001	Saadat H. Khan	0012-1	2402
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ERNEST D. BUFF ERNEST D. BUFF AND ASSOCIATES, LLC. 231 SOMERVILLE ROAD BEDMINSTER, NJ 07921			EXAMINER BORLINGHAUS, JASON M	
			ART UNIT	PAPER NUMBER
			3693	
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			04/21/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/864,043

**Applicant(s)**

KHAN, SAADAT H.

**Examiner**

JASON M. BORLINGHAUS

**Art Unit**

3693

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 459-469 and 471-473 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 459-469 and 471-473 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 459 – 469 and 471 - 473** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

**Claim 459** claims a "meter graphically depicts a quantified probability for system acceptance of buyer's offer." Examiner searched the specification but could not find any written description contained therein that the system calculates and displays a "quantified probability" as argued by the Applicant.

**Claims 459 – 469 and 471 – 473** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

**Claim 459** claims a "meter graphically depicts a quantified probability for system acceptance of buyer's offer." Examiner searched the specification but could not find any

written description contained therein that would enable one of ordinary skill in the art to determine how a “quantified probability” would be calculated or derived.

Dependent claims 460 – 469 and 471 – 473 are rejected based upon their dependency to Claim 459.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 459 – 469 and 471 - 473** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Claim 459** recites several steps performed by a program executed on a processor. The steps are enumerated as (i), (ii), (iii) and (iv). Step (ii) is for a bargaining process through which a buyer and seller arrive at an agreed upon price. Step (iii) is for arranging the purchase of the item/service at the agreed upon price.

However, step (iv) determines the probability that the system will accept the buyer's offer. Steps (ii) and (iii) indicate that the buyer's offer has been accepted, as the price has been agreed upon by the respective parties and the purchase has been arranged, and Examiner is uncertain whether step (iv) has been claimed in the correct order.

Dependent claims 460 – 469 and 471 – 473 are rejected based upon their dependency to Claim 459.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 459** is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent 5,794,207) in view of Miller (Miller, Michael. *The Complete Idiot's Guide to Online Auctions*. Que. 1999. pp. 1 – 331).

**Regarding Claim 459**, Walker discloses a (online auction) system for processing the sale and purchase of items, comprising:

- a. a storage device (data storage device). (see col. 11, line 40 – col. 14, line 52);
- b. a processor (CPU) connected to the storage device. (see col. 11, line 40 – col. 14, line 52; fig. 2); and

the storage device storing a program (software) for controlling the processor (see col. 11, line 40 – col. 14, line 52);

and the processor operative with the program to:

- i. receive sell offers from a seller (counteroffers) and bargain offers (purchase offers) from a buyer, including conditions for purchase (other conditions the buyer requires) and a payment identifier (payment preferences), thereby defining said bargain offer (see col. 8, line 27 – col. 9, line 50; col. 20, line 50 – col. 21, line 67; Claim 1) ;
- ii. carry out a bargaining (offer/counteroffer exchange) process with said buyer to arrive at a price for at least one of said items that is agreed on by said buyer and said seller. (see col. 22, line 40 – col. 23, line 17);
- iii. arrange for the purchase (payment) of said at least one item by said buyer from said seller at said price. (see col. 20, line 50 – col. 21, line 67); and
- iv. a graphic display (see col. 14, lines 56 – 59).

Walker does not explicitly teach a system providing a graphically displayed meter, wherein said meter graphically depicts a quantified probability for system acceptance of buyer's offer for purchase of the product.

However, Walker does disclose that buyer's offers possess a "status field" which indicates the probability of system acceptance of the buyer's offer. The status could be "pending" indicating 0% probability that the buyer's offer has been accepted by the system. The status could be "active" or "completed" indicating 100% probability that the buyer's offer has been accepted by the system. (see col. 17, lines 48 - 64).

Miller discloses a system (online auction system) in which the processor operative with the program to provide a graphically displayed meter, wherein said meter graphically depicts a quantified probability (100% or 0%) for system acceptance of buyer's offer (bid) for purchase of the product. (such as whether a buyer's offer is the current winning bid or, at least, satisfies a reserve price). (see pp. 20 – 22; 28 – 30; 189 - 197).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker by incorporating a graphical display, as disclosed by Miller, allowing for a buyer to monitor their status within the sale process and the probability of the sale proceeding to completion.

**Claims 460 – 470 and 471 - 473** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker and Miller, as in Claim 459 above, and in further view of

**Official Notice.**

**Regarding Claim 460**, Walker discloses a system further operative to:

- verify the legitimacy, authenticity and condition of said product. (Walker discloses that the central controller verifies that the seller can provide the specific good requested. Such verification includes verifying that seller is a legitimate and authenticated seller of such items. Furthermore, should the delivered goods not meet all the conditions and terms of the CPO, the central controller, acting as arbiter, verifies the condition of said products.  
– see col. 7, lines 9 – 12; col. 19 line 13 – col. 20, line 48);

- verify the pricing of products listed by the seller. (Walker discloses verification of price listed in seller counteroffer via authentication of seller posting the counteroffer – see col. 22, line 39 – col. 23, line 18);
- said verification comprising the steps of:
  - a. checking product certification (whether product meets conditions of CPO as certified via seller acceptance of CPO) at the time of pick-up or delivery. (see col. 20, lines 31 – 48); and
  - b. checking condition of said product at the time of pickup or delivery. (see col. 20, lines 31 – 48).

Walker does not teach a system further comprising obtaining issuance of an authenticity certificate from an authorized appraiser and obtaining a price evaluation from said authorized appraiser.

Examiner takes **Official Notice** that authentication of an item by an authorized appraiser, issuance of an authenticity certificate certifying such authenticity, and obtainment of a price evaluation from an authorized appraiser is old and well known in the art of sales and auction, such methodologies are typically employed, although not limited to, instances in which a purchaser is considering buying fine art or antiques.

It would have been obvious to one of ordinary skill in the art to have modified Walker and Miller by incorporating methodologies directed to ensuring authenticity and appraisal value of a potential purchase, as is old and well known in the art, thereby ensuring that the potential purchase item is as advertised and priced by the seller.



**Regarding Claims 461 – 469 and 471 - 473**, Walker discloses a system wherein said processor is further operative with the program to:

- validate a received bargain offer signal (conditional purchase offer – CPO) from said buyer or sell offer signal from seller (seller response) and thereby determine whether said received offer signal meets predetermined validation criteria. (see col. 16, line 12 – col. 17, lines 46; see col. 19, line 12 – 54);
- start the bargain process by generating bargain prices (via exchange of CPOs with modified conditions, such as price) for said buyer and said seller continuously until a point is reached where an acceptable price is arrived at or said buyer or said seller stop bargaining. (see col. 22, line 40 – col. 23, line 18);
- transmit a notification (counter-offer) the buyer, said buyer's bargain (CPO) is less than minimum predetermined criteria. (see col. 22, line 39 – col. 23, line 59);
- permit buyer to request free chances (CPO opportunities) or buy more chances (CPO opportunities) at a predetermined chance purchase price (flat fee). (see col. 20, lines 16 – 39);
- permit buyer to use one or more bargain chances (CPO opportunities) provided by the system to continue bargaining until all chances (CPO opportunities) have been used, said buyer having an election to

purchase additional chances (CPO opportunities) for a predetermined purchase price (fee). (see col. 20, lines 16 – 39);

- further configured to indicate to the buyer that a bargain price (CPO) generated (transmitted) by said system , upon being accepted by said seller, will remain active, subject to acceptance by said buyer, during a predetermined time period (expiration date), provided that the product or service appointed for purchase remains available. (see col. 13, lines 11 – 29);
- track buyer's accumulation of a predetermined number of purchases (tracking each CPO via the buyer database). (see col. 13, lines 1 –10); and
- providing at least one message (messages) during bargaining (on the CPO), said message being an advertisement. (see col. 20, lines 16 – 30).

Walker does not teach a system wherein said processor is operative to: notify the buyer concerning the status of shipment in transit, said notification being provided at the time of sale and periodically in response to a buyer or seller request after purchase of said product; enable the buyer to use discounts to enhance bargaining opportunities; award discounts or promotions; track buyer's accumulation of a predetermined number of purchase points, and notify buyer that said accumulation of purchase points are applicable to provide additional discounts; provide at least one pop-up message during bargaining, said surprise message according an additional discount on the product.

Miller discloses a system wherein said processor is operative to notify the buyer concerning the status of shipment in transit, said notification being provided at the time of sale and periodically in response to a buyer request after purchase of said product. (see pp. 41 – 42; 275 – 282).

Examiner takes **Official Notice** that enabling a buyer to use discounts to enhance bargaining opportunities, such as through the obtainment of a price discount; awarding discounts or promotions; accumulation of purchase points and the awarding of a promotional item, such as a discount, upon accumulation of a predetermined quantity of such points; pop-up messages advertising a discount on a product or other incentive are all old and well known in the art of advertising and promotions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker and Miller by incorporating a method by which to monitor the status of a shipment, as disclosed by Miller, allowing the purchaser to remain informed about the possible arrival date of said purchase.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker, Miller and **Official Notice** by incorporating traditional advertising and promotional methodologies, as are old and well known, to entice customers to engage to further purchases.

### ***Response to Arguments***

Applicant's arguments filed 12/20/07 have been fully considered but they are not persuasive.

**Quantified Probability**

Applicant has amended the claim language to incorporate the term "quantified." As such, Claim 459 now claims "said meter graphically depicts a **quantified** probability."

Examiner assumes, based upon Applicant's Arguments filed 12/20/07, that Applicant's arguments follow the following line of logic.

- Claim 459 claims a meter;
- A meter by its common and ordinary definition is a device that measures the quantity of units (e.g. time, distance, speed);
- This meter-derived measurement is a quantified measurement; and
- This quantified measurement when displayed requires the full spectrum of measurement to be displayed, namely the two endpoints and all gradations in between.

Examiner refutes the Applicant's line of logic.

First, Examiner asserts that the term "meter" has much broader meaning than the definition being asserted to by the Applicant. Applicant's recited definitions of a meter are accurate but Applicant appears to narrowly construe these definitions to suit his own intentions and fails to examine these definitions in the broadest reasonable sense possible.

For example, the Applicant defines meter as "an instrument for measuring, esp. one that automatically measures and records the quantity of something." (see

Applicant's Arguments, p. 11, footnote 2). With such a definition, Examiner is uncertain how Miller does not disclose a meter. Miller discloses that ebay measures (compares) submitted bids and records the quantity of something, either the currently winning bid or whether the submitted bid satisfies the reserve price.

Second, Examiner asserts that the term "quantified" has much broader meaning than the definition being asserted to by the Applicant. Although not explicitly stated by the Applicant, Examiner assumes that Applicant equates display of a "quantified probability" as the same as display of a "numerical probability". However, quantification does require numerical expression, as a measurement can be communicated via natural language (e.g. The highest bid is \$30).

Furthermore, the claim states "said meter graphically depicts a quantified probability" which is different than "said meter graphically displays a quantified probability." Just because a graph "depicts" a probability does not mean that the probability, itself, needs to be displayed. Miller discloses that ebay displays a meter which graphically depicts (communicates) the probability, either the currently winning bid or whether the submitted bid satisfies the reserve price.

Additionally, Applicant argues that a "quantified measurement" requires the display of end-points on the measurement scale ("no chance" and "a guarantee") and all points in between. Examiner is unaware of such an interpretation or definition of the term "quantified measurement," as to necessitate such a requirement.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason M Borlinghaus/

Examiner, Art Unit 3693

April 17, 2008

**Application Number**

Application/Control No.

09/864,043

Applicant(s)/Patent under  
Reexamination

KHAN, SAADAT H.

Examiner

JASON M. BORLINGHAUS

Art Unit

3693